

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

**FILED**  
**DECEMBER 22, 2009**  
KAREN S. MITCHELL  
CLERK, U.S. DISTRICT COURT

GARY D. TURNER,

Petitioner,

v.

RICK THALER, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

2:09-CV-0280

**REPORT AND RECOMMENDATION TO DENY PETITION**  
**FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

On November 25, 2009, petitioner filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody challenging the result of a December 15, 2008 prison disciplinary proceeding at the Clements Unit. In order to challenge a state prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner must, at a minimum, be eligible for mandatory release and have received a punishment sanction which included forfeiture of previously accrued good time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000). In his habeas application, petitioner acknowledges he is not eligible for mandatory supervised release and did not lose any previously accrued good time credits as a punishment sanction in the disciplinary proceeding.

Petitioner did not identify his holding conviction in his habeas application. However, petitioner's Offender Information Detail from the official website maintained by the Texas Department of Criminal Justice, Correctional Institutions Division, lists as petitioner's offense history petitioner's January 28, 1993 convictions for three (3) counts of capital murder out of Dallas

Case 2:09-cv-00280-J-BB Document 4 Filed 12/22/09 Page 2 of 3 PageID 18  
County, Texas. *See State v. Turner*, No. JD-30102-X-305th. As of the date petitioner committed  
his offenses, on May 21, 1991 and March 17, 1992, a prisoner serving a sentence for capital murder  
could not be released to mandatory supervision. Tex. Code Crim. Proc. art. 42.18 § 8(c)(2)  
(Vernons 1991 and 1992).

As petitioner did not lose previously accrued good time credits as a result of the prison  
disciplinary proceeding, and as petitioner is not eligible for mandatory supervised release, he is  
unable to challenge his state prison disciplinary adjudication by way of a federal petition for a writ  
of habeas corpus. Petitioner is not entitled to federal habeas corpus relief and his petition should be  
DENIED.

#### RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States  
District Judge that the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by  
petitioner GARY D. TURNER be DENIED.

#### INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and  
Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 22nd day of December 2009.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).